

## Message Text

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ACTION ARA-10

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C O N F I D E N T I A L CARACAS 9744

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TAGS: PINS ASEC PINT VE

SUBJ: NIEHOUS KIDNAPPING: ATTORNEY GENERAL ASKS SUPREME COURT  
TO RULE ON STATUS OF DEPUTIES' CASE; OPPOSITION WALKS OUT OF  
CHAMBER IN PROTEST AGAINST AD HANDLING OF CASE.

REF: CARACAS 9631, 9586, 9457

1. AUG 10 ATTORNEY GENERAL JOSE RAMON MEDINA OFFICIALLY ASKED  
THE VENEZUELAN SUPREME COURT TO RULE ON THE GOV'S ACTION IN DECIDING  
TO JUDGE DEPUTIES FORTUNADO HERRERA AND SALON MEZA IN MILITARY  
TRIBUNALS, AND WITHOUT RECOURSE TO THE NORMAL CONSTITUTIONAL  
PROCEDURES WHICH WOULD REQUIRE THE LIFTING OF THE DEPUTIES' IMMUNITY  
PRIOR TO ANY JUDICIAL ACTION AGAINST THEM. MEDINA SUBMITTED A SHORT  
DOCUMENT TO THE COURT IN WHICH, ACCORDING TO PRESS REPORTS, HE  
FORMALLY ASKED THAT THE SUPREME COURT REQUEST OFFICIAL MINUTES  
(ACTAS PROCESALA) FROM THE THIRD MILITARY COURT SO THAT THE SUPREME  
COURT CAN DECIDE WHETHER (THE PROCESS) CONFORMS TO THE  
PROVISIONS OF THE NATIONAL CONSTITUTION REQUIRING LIFTING OF  
PARLIAMENTARY IMMUNITY. THE PRESIDENT OF THE SUPREME COURT,  
DR MARTIN PEREZ GUEVARA, TOLD NEWSMEN THAT THE COURT MIGHT MAKE  
A DECISION SHORTLY. FOR HIS PART, MEDINA SAID HE HAD DECIDED TO  
PRESENT HIS CASE TO THE COURT BECAUSE LAWYERS FOR DEPUTY HERRERA  
HAD ALREADY INTRODUCED A WRIT OF HABEAS CORPUS BEFORE THE COURT.  
EARLIER IN THE WEEK, MEDINA HAD STATED THAT HE BELIEVED THE  
IMPRISONMENT OF THE DEPUTIES BY MILITARY AUTHORITIES AND THE  
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DECISION TO TRY THEM FOR MILITARY CRIMES BEFORE A MILITARY COURT

DO NOT CONFORM TO THE CONSTITUTION.

2. ON A RELATED MATTER, THE AD MAJORITY IN THE CHAMBER OF DEPUTIES THE EVENING OF AUG 10 VOTED DOWN A MOTION BY THE OPPOSITION WHICH PROPOSED THAT THE SUPREME COURT DECIDE THE CONSTITUTION OF THE DEPUTIES' CASES. MEP, COPEI, MAS, AND URD DEPUTIES ALL HARSHLY CRITICIZED AD FOR ITS HANDLING OF THE CASE. FOLLOWING REJECTION OF ITS MOTION, COPEI LEADER DEPUTY EDUCARDO FERNANDEZ ANNOUNCED TO COLLEAGUES THAT HE WAS LEAVING THE CHAMBER IN ORDER THAT THE GOVERNMENTAL MAJORITY UNDERSTAND ITS "RESPONSIBILITY DURING AN HISTORIC MOMENT FOR THE COUNTRY." WHEN SIMILAR MOTIONS BY URD AND MEP MEMBERS WERE REJECTED, ALL OF THE REMAINING OPPOSITION THEN LEFT THE CHAMBER AS A SIGN OF PROTEST. MEANWHILE, IN THE SENATE DURING THE SAME EVENING, TO PREVENT COPEI SECRETARY GENERAL PEDRO PABLO AGUILAR FROM SPEAKING, THE AD SENATORS WALKED OUT, CAUSING THE PRESIDING OFFICER TO CLOSE THE SESSION IN THE ABSENCE OF A QUORUM.

3. FINALLY, MINISTER OF DEFENSE GENERAL FRANCISCO ELOY ALVAREZ TORRES TOLD THE PRESS THAT THE MILITARY RESPECT THE JUDICIAL SYSTEM AND THAT AT THE PRESENT MOMENT THE MILITARY IS SIMPLY EXAMING THE CAUSES OF THE PRESUMED CRIME AGAINST THE MILITARY (PRESUNTO DELITO DE LA JURISDICCION MILITARY).

4. BEGIN COMMENT: THE GOVT APPEARS TO BE IN A DISTINCT STATE OF DISARRAY ON THIS MATTER. THE HANDLING OF THE NIEHOUS CASE, WHICH HAS BEEN HANDICAPPED FROM THE BEGINNING BY SLOPPY POLICE WORK HAS NOT BEEN IMPROVED BY THE SLIPSHOD POLITICAL DECISIONS WHICH HAVE ACCOMPANIED THE PROCESS. WHY THE GOV DECIDED TO BYPASS THE SUPREME COURT AND THE CONGRESS ON THE QUESTION OF CONGRESSIONAL IMMUNITIES AND PRESS INSTEAD FOR DIRECT PROSECUTION OF THE DEPUTIES IN A MILITARY COURT IS A PUZZLE. THIS IS ONE MORE CASE WHERE SOME OBSERVERS BELIEVE THAT PRESIDENT PEREZ MAY HAVE ACTED IMPULSIVELY. THE MINISTER OF INTERIOR, ON THE OTHER HAND, INFORMED US THAT THE THOUGHT WAS TO REAFFIRM THE "CALVANI DOCTRINE" WHICH HAD BEEN EMPLOYED BY SEVERAL PRECEDING GOVTS, BOTH AD AND COPEI, AND WHICH PERMITS SUCH PROSECUTION. IT WAS HIS THOUGHT THAT THE VENEZUELAN CONSTITUTION

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WAS TOO LIBERAL "EVEN FOR SWITZERLAND" AND THAT ONLY BY APPLYING THE STRICTER CONTROLS IMPLIED IN THE "DOCTRINE" WOULD IT BE POSSIBLE TO SUPPRESS POLITICAL TERRORISM.

5. IN A MASSIVE MISCALCULATION THE GOV HAD APPARENTLY ASSUMED THAT COPEI WOULD STAND BY THEM AS THEY DID IN MORE DIFFICULT TIMES DURING THE 60'S. TO

UNDERSTAND THIS POINT, ONE SHOULD BE AWARE OF THE  
GOVT'S BASIC BELIEF THAT THE VENEZUELAN  
DEMOCRATIC SYSTEM IS FRAGILE, THAT A CONSIDERABLE AMOUNT  
OF OPPOSITION TO THE GOV IS FROM FACTORS COMMITTED  
TO DESTROYING THAT SYSTEM AND THAT EXTRAORDINARY  
MEASURES ARE REQUIRED TO PRESERVE THE DEMOCRATIC PROCESS.  
IT IS APPARENT THAT COPEI IS EITHER NOT CONVINCED  
OF ANY IMMINENT DANGER OR SIMPLY HAS NOT BEEN ABLE TO  
RESIST THE POLITICAL ADVANTAGES OF OPPOSING A GOVT  
FLOUNDERING IN PROBLEMS OF ITS OWN MAKING. THERE  
IS THE OBVIOUS SUSPICION THAT THE GOVT IS ATTEMPTING TO  
RECOUP FROM THE SERIOUS BLOW INVOLVED IN THE MURDER OF  
THE SECRETARY-GENERAL OF THE SOCIALIST LEAGUE AND THAT  
ITS APPROACH HAS BEEN MORE SELF-INTERESTED THAN  
PATRIOTIC OR ALTRUISTIC. WE ARE NOT YET PREPARED TO  
SAY THE GOV IS IN SERIOUS TROUBLE ALTHOUGH IT  
SEEMS TO BE HEADED THAT WAY. DONNA NIEHOUS IS GIVING  
A PRESS CONFERENCE THIS EVENING TO OFFER A  
BS2 MILLION REWARD FOR INFORMATION LEADING TO HER  
HUSBAND. SOME LUCKY BREAK MAY YET ENABLE THE GOVT  
TO TURN THE SITUATION AROUND. NEVERTHELESS, AT  
THIS MOMENT THE GOVT IS BEHIND THE POLITICAL  
EIGHT-BALL. END COMMENT.  
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